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6
7 Attorneys for Defendant
TIME WARNER CABLE LLC
8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11

12 JAIME CALZADA; MIGUEL
CALZADA; and CHERYL BACA, on
13 behalf of themselves and all others
similarly situated,,
14

15 Plaintiffs,
16

17 v.
18

19 TIME WARNER CABLE LLC, a
Delaware Corporation, and DOES 1
through 100, Inclusive,
20

21 Defendant.
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FILED
11 FEB 25 PM 3:03
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
BY: _____

No.

CV11-01701MMM(JCGx)

**NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C.
§§ 1332(d)(2), 1441(a), 1453(b)
(CLASS ACTION FAIRNESS
ACT of 2005)**

1 TO THE CLERK OF THE COURT:

2 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. sections 1332, 1441,
3 and 1453, defendant Time Warner Cable LLC ("TWC") hereby removes to this
4 Court the state court action described below.

5 **JURISDICTION AND ASSIGNMENT TO COURT**

6 1. This is a civil action over which this Court has original jurisdiction
7 under 28 U.S.C. section 1332(d)(2). It is a class action in which diversity exists
8 between at least one plaintiff and a defendant, the amount in controversy exceeds
9 \$5 million, exclusive of interest and costs, and the putative class consists of at least
10 100 members. *See* 28 U.S.C. § 1332(d)(2). This action is removable under the
11 Class Action Fairness Act of 2005 ("CAFA"), codified in 28 U.S.C. sections
12 1332(d), 1441(a), and 1453(b), because U.S. District Courts now have original
13 jurisdiction over class actions meeting the requirements set forth in section
14 1332(d)(2).

15 2. Assignment to this Court is proper because the civil action is being
16 removed from the Superior Court of California, County of Los Angeles.

17 **STATE COURT ACTION**

18 3. On January 27, 2011, Plaintiffs commenced an action in the Superior
19 Court of the State of California for the County of Los Angeles, titled *Jaime*
20 *Calzada; Miguel Calzada; and Cheryl Baca, on behalf of themselves and all others*
21 *similarly situated v. Time Warner Cable LLC, a Delaware Corporation, and Does 1*
22 *through 100, inclusive*, which the court assigned Case Number BC 453904. A true
23 copy of the summons and the complaint ("Complaint") is attached hereto as
24 Exhibit A.

25 4. Plaintiffs caused TWC to be served with the summons and Complaint
26 on February 9, 2010. *See* Ex. A.

27 **CITIZENSHIP AND AMOUNT IN CONTROVERSY**

28 5. On February 18, 2005, Congress enacted CAFA "to amend the

1 procedures that apply to consideration of interstate class actions to assure fairer
2 outcomes for class members and defendants.” Pub. L. 109-2. The effect of CAFA
3 is to federalize large scale, small claim class actions based on state law -- the
4 precise type of case Plaintiffs filed here. *See Weil & Brown, Cal. Prac. Guide:*
5 *Fed. Civ. Pro. Before Trial*, 2:846.31 (The Rutter Group 2008). CAFA amends the
6 federal diversity statute (28 U.S.C. § 1332), and “now vests original jurisdiction for
7 class actions in federal court where there is minimal diversity and the amount in
8 controversy exceeds \$5,000,000.” *Bush v. Cheaptickets*, 425 F. 3d 683, 684 (9th
9 Cir. 2005).

10 6. Minimal diversity exists here and the removal of this putative class
11 action to federal court is proper because: (1) the number of putative class members
12 exceeds 100; (2) the amount in controversy of the combined claims of all class
13 members exceeds \$5 million, exclusive of interest and costs; and (3) any class
14 member is a citizen of a different state than any defendant. *See* 28 U.S.C. §§
15 1332(d)(2), 1332(d)(5)(B), and 1332(d)(6); Complaint, ¶¶ 1-3; Picciolo Decl., ¶¶ 3-
16 5. A true copy of the Declaration of Deborah Picciolo (“Picciolo Decl.”) is
17 attached hereto as Exhibit B.

18 7. The Complaint alleges the putative class includes “All California
19 residents whose telephone calls to Time Warner Cable were recorded by Time
20 Warner without their consent from January 24, 2007 to present.” Complaint, ¶ 11.
21 The Complaint further alleges that TWC’s “call centers have recorded every
22 telephone call they received from customers and potential customers during the
23 time from January 24, 2007 to the present.” Complaint, ¶ 16. The Complaint
24 further alleges that TWC has recorded calls of the putative class without all parties’
25 consent. Complaint, ¶ 32. Since January 2007, TWC has handled in excess of 1.3
26 million calls each month from more than 100 California residents, satisfying
27 CAFA’s requirement that the proposed class include at least 100 members. *See*
28 Picciolo Decl., ¶ 5.

1 8. The Complaint alleges that class members are entitled to compensatory
2 damages, general damages, an amount equal to up to three times each class
3 member's actual damages, attorney fees, restitution, and injunctive relief.
4 Complaint, pp. 8-9 (Prayer). The Complaint alleges that each Plaintiff and each
5 class member is entitled to recover three times his or her actual damages, or \$5,000,
6 whichever is greater, "for each confidential communication that [TWC] recorded in
7 violation of Penal Code section 632." Complaint, ¶ 28. Because TWC handled
8 over 1.3 million calls per month, the amount in controversy exceeds \$5 million.
9 See Picciolo Decl., ¶ 5.

10 9. The Complaint requests attorney fees (Complaint, pp. 8-9 (Prayer)),
11 which may be included in the amount in controversy for jurisdictional purposes
12 under CAFA. *Lowdermilk v. U.S. Bank Nat'l Assn.*, 479 F.3d 994, 1000 (9th Cir.
13 2007). Attorney fees "can exceed six figures in a class action and are properly
14 aggregated and considered for purposes of determining the amount in controversy
15 under CAFA." *Frederico v. Home Depot*, 507 F.3d 188, 197 (3d. Cir. 2007).

16 10. Finally, TWC is a limited liability corporation which was, at the time
17 of the filing of this action, and remains, incorporated under the laws of the state of
18 Delaware, with its headquarters and principal place of business in New York, New
19 York, and was and is not a citizen of the state of California. Complaint, ¶ 3;
20 Picciolo Decl., ¶ 3. Plaintiffs Jaime Calzada, Miguel Calzada, and Cheryl Baca are
21 citizens of California. Complaint, ¶¶ 1-3.

22 11. Thus, this Court's jurisdiction under CAFA is established because:
23 (1) the putative class exceeds the minimum of 100 class members; (2) plaintiffs'
24 alleged damages exceed the jurisdictional minimum of \$5 million; and (3) plaintiffs
25 and TWC are citizens of different states. Complaint, ¶¶ 1-3; Picciolo Decl., ¶¶ 3-5.
26 Removal of this action to federal court is proper.

27 12. The exceptions to removal under 28 U.S.C. sections 1332(d) and 1446
28 do not apply to this case.

1 WHEREFORE, defendant TWC prays this action now pending in the
2 Superior Court of California for the County of Los Angeles be removed to this
3 Court.
4

5 Dated: February 25, 2011

WHITE & CASE LLP

6
7 By: 

8 Bryan A. Merryman
9 Attorneys for Defendant
10 TIME WARNER CABLE LLC
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EXHIBIT A

SUMMONS (CITACION JUDICIAL)

SUM-100

**NOTICE TO DEFENDANT: TIME WARNER CABLE, LLC., a
(AVISO AL DEMANDADO):** Delaware Corporation, and DOES 1
through 100, Inclusive.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY
ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JAN 27 2011

John A. Clarke, Executive Officer/Clerk
BY Shaunya Wesley Deputy

**YOU ARE BEING SUED BY PLAINTIFF: JAIME CALZADA; MIGUEL
(LO ESTÁ DEMANDANDO EL DEMANDANTE): CALZADA; AND CHERYL
BACA, on behalf of themselves and all others similiary
situated**

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte lo podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Stanley Mosk
111 North Hill Street
111 North Hill Street
Los Angeles, California 90012

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Howard A. Goldstein, Esq. (SBN 166005) (818) 981-1010 (818) 981-1311
LAW OFFICES OF HOWARD A. GOLDSTEIN
13701 Riverside Drive
Sherman Oaks, California 91423

DATE:

(Fecha)

JAN 27 2011

Clerk, by

(Secretario)

Shaunya Wesley

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010)).
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (Form POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☒ on behalf of (specify): TIME WARNER CABLE LLC
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
- ☒ by personal delivery on (date): 2-9-11

[SEAL]

CONFORMED COPY
ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JAN 27 2011

John A. Chate, Executive Officer/Clerk
BY (Signature), Deputy
Shaunya Wesley

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Telephone (818) 780-3562

Attorneys for Plaintiffs, JAIME CALZADA and CHERYL BACA, on behalf of themselves and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

BC 453904

JAIME CALZADA; MIGUEL CALZADA;
and CHERYL BACA, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

TIME WARNER CABLE LLC, a Delaware
Corporation, and DOES 1 through 100,
Inclusive.

Defendants.

CASE NO.

**CLASS-ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF**

1. Violation of Penal Code section 632
2. Unfair Business Practices (Business and Professions Code sections 17200, et. seq.)

PREFACE

All allegations in this complaint are based upon information and belief except for those allegations that pertain to the named Plaintiffs or their counsel. Plaintiffs' information and belief is based upon, *inter alia*, the investigation conducted to date by Plaintiffs and their counsel. Each allegation in this complaint either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

THE PARTIES

1. PLAINTIFF JAIME CALZADA is an individual who resides, and at all relevant times resided in Los Angeles County, California.

2. PLAINTIFF MIGUEL CALZADA is an individual who resides, and at all relevant times resided in Los Angeles County, California.

3. PLAINTIFF CHERYL BACA is an individual who resides, and at all relevant times resided in Los Angeles County, California.

3. PLAINTIFFS are informed and believe, and allege that TIME WARNER CABLE LLC ("DEFENDANT") is, and at all relevant times was a Delaware corporation authorized to conduct business, and actually conducting business, in the State of California as Time Warner Cable.

4. The true names and capacities, whether individual, corporate, partnership, associate or otherwise of DEFENDANTS Does 1 through 100, inclusive, are unknown to PLAINTIFFS who therefore sue these DEFENDANTS by those fictitious names under California Code of Civil Procedure section 474. The CLASS will seek leave to amend this complaint to allege the true names and capacities of Does 1 through 100, inclusive, when they are ascertained.

5. PLAINTIFFS are informed and believe, and based upon that information and belief allege, that the DEFENDANTS named in this complaint, including Does through 100, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages alleged in this complaint.

6. PLAINTIFFS are informed and believe, and allege, that each of the DEFENDANTS, including Does 1 through 100, inclusive, in performing or omitting to perform the acts alleged in this complaint, was, at various times, acting within the course and scope of his or her employment, authority, or apparent authority as an employee, agent and/or representative of the other DEFENDANTS.

7. PLAINTIFFS are informed and believe, and based upon that information and belief allege, that each DEFENDANT named in this complaint, including Does 1 through 100, inclusive, knowingly and willfully acted in concert, conspired and agreed together among themselves and entered into a combination and systemized campaign of activity to, *inter alia*, damage the PLAINTIFF CLASS and to otherwise consciously and/or recklessly act in derogation of the PLAINTIFF CLASS' rights, and the trust reposed by the PLAINTIFF CLASS in each of the DEFENDANTS, with the acts being negligently and/or intentionally inflicted. The conspiracy, and DEFENDANTS' concerted actions, were such that, to the PLAINTIFFS' information and belief, and to all appearances, DEFENDANTS, and each of them, represented a unified body so that the actions of one DEFENDANT were accomplished in concert with, and with knowledge, ratification, authorization and approval of each of the other DEFENDANTS.

8. PLAINTIFFS are informed and believe, and allege, that each of the DEFENDANTS named in this complaint, including Does 1 through 100, inclusive, is, and at all times mentioned was, the agent, servant and/or employee of each of the other DEFENDANTS and that each DEFENDANT was acting within the course of scope of his, her or its authority as the agent, servant and/or employee of each of the other DEFENDANTS. Consequently, all of the DEFENDANTS are jointly and severally liable to the PLAINTIFF CLASS for the damages sustained as a proximate result of their conduct.

JURISDICTION AND VENUE

9. This court has jurisdiction over this action under Code of Civil Procedure section 410.10. The action is brought under Code of Civil Procedure section 382; the procedural provisions of rule 23 of the Federal Rules of Civil Procedure (28 U.S.C.); Civil Code sections 51.5 and 51.6; and Business and Professions Code sections 17200, et seq. PLAINTIFFS bring

1 this action on their own behalf, on behalf of all persons in the defined class, and as private
2 attorneys general on behalf of the general public.

3 10. Venue is proper in this court under Code of Civil Procedure sections 395 and
4 395.5 because the injuries to the persons complained of occurred in Los Angeles County and
5 because the DEFENDANT did business as Time Warner Cable in Los Angeles County.

6 **CLASS DEFINITION**

7 11. The PLAINTIFF CLASS (the CLASS) consists of the following persons:

8 "All California residents whose telephone calls to Time Warner Cable were recorded by
9 Time Warner without their consent from January 24, 2007 to the present."

10 **CLASS TREATMENT**

11 12. The persons who comprise the CLASS are so numerous that joinder of all of them
12 is impracticable, and the disposition of their claims will benefit the parties and the Court. The
13 claims of the PLAINTIFFS are typical of the claims of the CLASS that PLAINTIFFS seek to
14 represent. The PLAINTIFFS will fairly and adequately protect the interests of the CLASS that
15 they seek to represent. The PLAINTIFFS do not have any interests antagonistic to the CLASS
16 that they seek to represent. Counsel for the PLAINTIFFS are experienced, qualified and
17 generally able to conduct complex class-action litigation.

18 13. This Court should permit this action to be maintained as a class action under Code
19 of Civil Procedure section 382 because:

20 (A) The questions of law and fact common to the CLASS predominate over
21 any question affecting only individual members;

22 (B) A class action is superior to any other available method for the fair and
23 efficient adjudication of the claims of the members of the CLASS;

24 (C) The members of the CLASS are so numerous that it is impractical to bring
25 all members of the CLASS before the Court;

26 (D) PLAINTIFFS, and the other members of the CLASS, will not be able to
27 obtain effective and economic legal redress unless the action is maintained as a class
28 action;

1 (E) There is a community of interest in obtaining appropriate legal and
 2 equitable relief for the common-law and statutory violations and other improprieties, and
 3 in obtaining adequate compensation for the damages and injuries for which
 4 DEFENDANT is responsible in an amount sufficient to adequately compensate the
 5 members of the CLASS for the injuries sustained;

6 (F) Without CLASS certification, the prosecution of separate actions by
 7 individual members of the CLASS would create a risk of:

8 (i) Inconsistent or varying adjudications with
 9 respect to individual members of the CLASS
 10 that would establish incompatible standards
 11 of conduct for DEFENDANT TIME
 12 WARNER CABLE LLC. and/or

13 (ii) Adjudications with respect to the individual
 14 members that would, as a practical matter,
 15 be dispositive of the interests of other
 16 members not parties to the adjudications, or
 17 would substantially impair or impede their
 18 ability to protect their interests, including
 19 but not limited to the potential for
 20 exhausting the funds available from those
 21 parties who are, or may be, responsible
 22 DEFENDANTS; and,

23 THE CONDUCT

24 14. DEFENDANT TIME WARNER CABLE LLC. (hereinafter "TIME WARNER")
 25 owns and operates cable television systems in the state of California.

26 15. TIME WARNER offers cable television services to subscribers in the state of
 27 California. As part of its business, TIME WARNER operates call centers for customer service
 28 and new subscribers.

16 16. PLAINTIFFS are informed and believe, and allege, that TIME WARNER's call
 17 centers have recorded every telephone call they received from customers and potential customers
 18 during the time from January 24, 2007 to the present (the CLASS PERIOD.)

19 17. On about September 25, 2009, PLAINTIFF JAIME CALZADA made a telephone
 20 call to a TIME WARNER call center to upgrade his cable television service. He was not told
 21 that the call was being, or might be recorded, and did not consent to the call being recorded.

1 18. PLAINTIFF JAIME CALZADA intended and understood that his telephone call
2 with the TIME WARNER call center would be confidential.

3 19. PLAINTIFFS are informed and believe that the call center intentionally recorded
4 Mr. CALZADA'S call without his consent.

5 20. On about February 6, 2010, PLAINTIFF MIGUEL CALZADA made a telephone
6 call to a TIME WARNER call center to order a pay-per-view program. He was not told that the
7 call was being, or might be recorded, and did not consent to the call being recorded.

8 21. PLAINTIFF MIGUEL CALZADA intended and understood that his telephone
9 call with the TIME WARNER call center would be confidential.

10 22. PLAINTIFFS are informed and believe that the call center intentionally recorded
11 Mr. CALZADA'S call without his consent.

12 23. On about September 29, 2009, PLAINTIFF CHERYL BACA made a telephone
13 call to a TIME WARNER call center to confirm an address to pick up a remote-control device.
14 She was not told that the call was being, or might be recorded, and did not consent to the call
15 being recorded.

16 24. PLAINTIFF CHERYL BACA intended and understood that her telephone call
17 with the TIME WARNER call center would be confidential.

18 25. PLAINTIFFS are informed and believe that the call center intentionally recorded
19 Ms. BACA'S call without her consent.

20 **FIRST CAUSE OF ACTION FOR INVASION OF PRIVACY UNDER PENAL CODE**

21 **SECTION 632 (PENAL CODE SECTIONS 632 AND 632.7)**

22 **(By the PLAINTIFF CLASS and against DEFENDANT)**

23 26. PLAINTIFFS reallege and incorporate by reference, as though fully set forth,
24 paragraphs 1 through 25 of this complaint.

25 27. Penal Code section 632 prohibits "persons," including entities such as TIME
26 WARNER, from intentionally recording a confidential communication by means of an electronic
27 recording device without the consent of all parties.

1 28. Under Penal Code section 632.7, each PLAINTIFF and each CLASS member are
2 entitled to recover three times their actual damages, or \$5,000, whichever is greater, for each
3 confidential communication that TIME WARNER recorded in violation of Penal Code section
4 632.

5 **SECOND CAUSE OF ACTION FOR VIOLATION OF BUSINESS AND PROFESSIONS**

6 **CODE SECTIONS 17200, ET SEQ.**

7 **(By the PLAINTIFF CLASS and against DEFENDANT)**

8 29. PLAINTIFS reallege and incorporate by reference as though fully set forth,
9 paragraphs 1 through 28 of this complaint.

10 30. PLAINTIFS bring this claim on behalf of themselves, all persons similarly
11 situated, and the general public.

12 31. DEFENDANT TIME WARNER is a "person" as that term is defined under
13 Business and Professions Code section 17201.

14 32. At all relevant times during the CLASS PERIOD, through the conduct described
15 in this complaint, DEFENDANT has engaged in unfair and unlawful practices by recording
16 confidential communications by means of electronic recording devices without all parties'
17 consent, and has thereby deprived the PLAINTIFF CLASS of fundamental rights and privileges
18 guaranteed to all persons under the Penal Code.

19 33. Through the unfair and unlawful business practices described in this complaint,
20 DEFENDANT has obtained valuable property, money and services from the PLAINTIFF
21 CLASS, and has deprived the PLAINTIFF CLASS of valuable rights and benefits guaranteed by
22 the law, all to their detriment.

23 34. All of the acts described as violations of, among other things, the California Penal
24 Code, are unlawful and in violation of public policy; and in addition are immoral, unethical,
25 oppressive, and unscrupulous, and constitute unfair and unlawful business practices in violation
26 of California Business and Professions Code sections 17200 et seq.

35. The PLAINTIFF CLASS is entitled to, and does, seek relief necessary to restore to them the money and property which DEFENDANT has acquired, or of which the PLAINTIFF CLASS has been deprived, by means of DEFENDANT'S unfair and unlawful business practices.

36. The PLAINTIFF CLASS is further entitled to, and do, seek a declaration that the DEFENDANT'S business practices are unfair and unlawful and that injunctive relief should be issued restraining DEFENDANT from engaging in any of these unfair and unlawful business practices in the future.

33. The PLAINTIFF CLASS has no plain, speedy, and/or adequate remedy at law to redress the injuries that they have suffered as a consequence of the DEFENDANT'S unfair and unlawful business practices. As a result of these unfair and unlawful business practices, the PLAINTIFF CLASS has suffered and will continue to suffer irreparable harm unless DEFENDANT is restrained from continuing to engage in these unfair and unlawful business practices. In addition, DEFENDANT should be required to restore the overpaid charges to PLAINTIFF CLASS.

PRAYER

WHEREFORE, PLAINTIFFS pray for judgment as follows:

1. ON THE FIRST CAUSE OF ACTION:

- A. For compensatory damages, according to proof;
- B. For general damages, according to proof;
- C. For an amount equal to up to three times each CLASS member's actual damages, but not less than \$5,000 for each CLASS member; and
- D. For attorney's fees.

2. ON THE SECOND CAUSE OF ACTION:

- A. For restitution;
- B. For injunctive relief ordering the continuing unfair business acts and practices to cease, or other order the court deems just and proper.

3. ON ALL CAUSES OF ACTION:

- A. For reasonable attorneys' fees;

- B. For costs of suit;
- C. For prejudgment interest; and
- D. For other and further relief this court deems just and proper.

DATED: January 25, 2011

LAW OFFICES OF HOWARD A. GOLDSTEIN



By: HOWARD A. GOLDSTEIN, ESQ.

Attorney for Plaintiffs

EXHIBIT B

1 BRYAN A. MERRYMAN (SBN: 134357)
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4 Los Angeles, CA 90071-2007
Telephone: (213) 620-7700
5 Facsimile: (213) 452-2329

6
7 Attorneys for Defendant
TIME WARNER CABLE LLC
8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11

12 JAIME CALZADA; MIGUEL
CALZADA; and CHERYL BACA, on
13 behalf of themselves and all others
similarly situated,,
14

Plaintiffs,
15

v.
16

17 TIME WARNER CABLE LLC, a
Delaware Corporation, and DOES 1
through 100, Inclusive,
18

Defendant.
19

No.

**DECLARATION OF DEBORAH
PICCIOLO IN SUPPORT OF
NOTICE OF REMOVAL**

DECLARATION OF DEBORAH PICCIOLO

I, Deborah Picciolo, declare:

1. I am the RVP of Operations California ("RVP") of Time Warner Cable ("TWC"). I have held this position since June 2010. From February 1, 2009, through June 2010, I was the West Region President Residential Services. As RVP, I oversee the provision of cable services to all of TWC's residential subscribers in Southern California. Prior to becoming West Region President Residential Services, I served as TWC's Division President, Los Angeles – North since August 1, 2006.

2. In preparing this declaration, I have relied upon my personal knowledge and my review of TWC's business records, maintained under my supervision and control, including memoranda, reports and records of acts, events, and transactions made in the regular course of TWC's business at or near the time of the act, event or transaction. In the regular course of my duties as RVP, I review TWC's records regarding the number of subscribers and call volumes within California.

3. TWC is a Delaware LLC with its headquarters and principal place of business in New York, New York.

4. At all times since January 2007, TWC has had at least 1.8 million subscribers in California.

5. At all times since January 2007, TWC's call centers have handled over 1.3 million calls per month from in excess of 100 California residents.

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct. Executed on February 25, 2011, at Chatsworth, California.


Deborah Picciolo

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 633 W. Fifth Street, Suite 1900, Los Angeles, CA 90071-2007. I am employed by a member of the Bar of this Court at whose direction the service was made.

On February 25, 2011, I served the foregoing document(s) described as **NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §§ 1332(d)(2), 1441(a), 1453(b) (CLASS ACTION FAIRNESS ACT of 2005)** on the person(s) below, as follows:

David Griefinger, Esq. Attorneys for Plaintiff
1801 Ocean Park Blvd., Suite 201
Santa Monica, CA 90405
Phone: (310)452-7923
Fax: (310) 450-4715
Email: tracklaw@verizon.net

Howard A. Goldstein, Esq. Attorneys for Plaintiff
Law Offices of Howard A. Goldstein
13701 Riverside Drive, Suite 608,
Sherman Oaks, CA 91423
Phone: (818) 981-1010
Fax: (818) 981-1311
Email: lohag@att.net

Kenneth M. Lipton, Esq. Attorneys for Plaintiff
5900 Sepulveda Blvd., Suite 400
Van Nuys, CA 91411
Phone: (818) 780-2580

☒ **(BY MAIL)** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above and placed the envelope for collection and mailing at 633 W. Fifth St., Suite 1900, Los Angeles, California, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

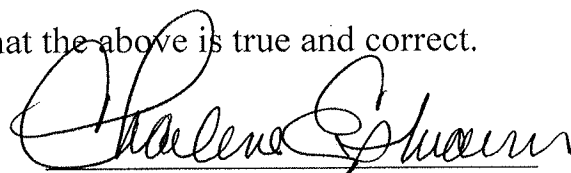
☐ **(BY OVERNIGHT DELIVERY)** I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the person(s) at the address(es) listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier, or delivered it to an authorized courier or driver authorized by the carrier to receive documents, with delivery fees paid.

☐ **(BY PERSONAL SERVICE)** I personally delivered the document(s) to the person(s) at the address(es) listed above. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the document(s) in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the document(s) at the party's residence with some person not less than 18 years of age between the hours of 8:00 a.m. and 6:00 p.m.

☐ **(BY E-MAIL OR ELECTRONIC TRANSMISSION)** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I transmitted the document(s) electronically to the person(s) at the e-mail address(es) listed above. The transmission was reported as complete and without error.

Executed on February 25, 2011, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.


Charlene Ephraim

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Margaret M. Morrow and the assigned discovery Magistrate Judge is Jay C. Gandhi.

The case number on all documents filed with the Court should read as follows:

CV11- 1701 MMM (JCGx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

===== :
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)
JAIME CALZADA, MIGUEL CALZADA, AND CHERYL BACA

DEFENDANTS
TIME WARNER CABLE LLC

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
David Greifinger (SBN: 105242)
1801 Ocean Park Blvd., Suite 201
Santa Monica, CA 90405
Telephone: (310) 452-7923
SEE ATTACHMENT A

Attorneys (If Known)
Bryan A. Merryman (SBN: 134357)
Rachel J. Feldman (SBN: 246394)
WHITE & CASE LLP
633 W. Fifth St., Suite 1900
Los Angeles, CA 90071-2007
Telephone: (213) 620-7700

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

V. ORIGIN (Place an X in one box only.)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

VI. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check 'Yes' only if demanded in complaint.)

VII. ASS ACTION under F.R.C.P. 23: ☒ Yes ☐ No

☒ **MONEY DEMANDED IN COMPLAINT:** \$ 5,000,000.00

VIII. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
8 U.S.C. 1332(d); Plaintiffs and Defendant are citizens of different states and the Federal Court has diversity jurisdiction in this case.

IX. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 22 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 630 Liquor Laws	SOCIAL SECURITY
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 61 HIA (1395ff)
<input type="checkbox"/> 891 Agricultural Act	REAL PROPERTY	IMMIGRATION	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 863 DIWC/DIWW 405(g)
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land				FEDERAL TAX SUITS
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

III(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

III(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

X. VENUE: (When completing the following information, use an additional sheet if necessary.)

- i) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Aime Calzada: State of California, Los Angeles County	
Miguel Calzada: State of California, Los Angeles County	
Cheryl Baca: State of California, Los Angeles County	

- j) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Time Warner Cable: New York and Delaware

- k) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
State of California, Los Angeles County	

Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

SIGNATURE OF ATTORNEY (OR PRO PER):

Bryan A. Merryman
 Bryan A. Merryman

Date

2/25/11

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

y to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

Attachment A

David Greifinger (SBN: 105242)
1801 Ocean Park Blvd., Suite 201
Santa Monica, CA 90405
Telephone: (310) 452-7923

Howard A. Goldstein (SBN: 166005)
LAW OFFICES OF HOWARD A. GOLDSTEIN
13701 Riverside Drive, Suite 608
Sherman Oaks, CA 91423
Telephone: (818) 981-1010

Kenneth M. Lipton (SBN: 82342)
5900 Sepulveda Blvd., Suite 400
Van Nuys, CA 91411-2580
Telephone: (818) 780-3562

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 633 W. Fifth Street, Suite 1900, Los Angeles, CA 90071-2007. I am employed by a member of the Bar of this Court at whose direction the service was made.

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David Griefinger, Esq. Attorneys for Plaintiff
1801 Ocean Park Blvd., Suite 201
Santa Monica, CA 90405
Phone: (310)452-7923
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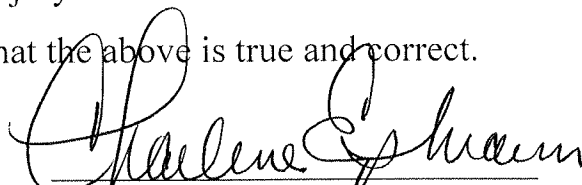
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Executed on February 25, 2011, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.


Charlene Ephraim